# [Bond Case Briefs]

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**BOND VALIDATION - GEORGIA**

## [Bene v. State]

**Court of Appeals of Georgia - October 27, 2021 - S.E.2d - 2021 WL 4987582**

State brought bond validation petitions seeking judgment confirming and validating county development authority's issuance of proposed taxable revenue bonds and related security intended to finance four development projects.

"The transactions share a common structure, and this structure is relevant to the issues on appeal. Specifically, the petitions sought to create a bond transaction leasehold estate, where, in consideration for the issuance of the bonds, the Companies agree to transfer fee simple title in the projects to the Authority, and the Authority and the Companies agree to execute a lease agreement under which the Companies would have the right to possession of the respective projects for a term of ten years. During the term of the lease, the Authority's interest in the projects will be exempt from ad valorem taxation; only the Companies' leasehold interest is subject to taxation. In connection with the transactions, the Authority and the Companies executed "Memoranda of Agreement" ("MOA") establishing the valuation methodology to be used in assessing ad valorem taxes on the leasehold estates. The percentage of value for each year for taxation purposes is set forth in the MOAs, starting at 50 percent of the fair market value in the first year after completion of the construction and ramping up to 95 percent of the fair market value in the tenth year following construction. At the conclusion of the lease term, the Companies would have the right to purchase the projects for nominal consideration of $10 pursuant to the terms of the lease agreement."

County resident intervened and filed objections. The Superior Court entered orders validating and confirming the bonds and bond security. Resident appealed.

The Court of Appeals held that:

- State did not fail to comply with statute requiring bond validation petitions to state purpose of bonds to be issued;
- Evidence supported finding that county would derive substantial benefit from bond transaction;
- Superior court did not impermissibly shift burden of proof;
- Superior court did not rule on ad valorem taxation issues without subject-matter jurisdiction;
- Superior court had jurisdiction concerning issue of valuation methodology;
- Superior court's explanation as to why it had subject-matter jurisdiction over State's petition was sufficient to satisfy statutory requirements; and
- Superior court made adequate findings of fact and conclusions of law to support conclusion that bond transactions at issue did not violate Gratuities Clause.

State bringing bond validation petitions seeking judgment confirming and validating county development authority's issuance of proposed taxable revenue bonds to finance four development projects did not fail to comply with statute requiring bond validation petitions to state purpose of bonds to be issued; each petition included their stated purpose in similarly worded language, including that bond proceeds would be "used to finance a portion of the costs of acquisition, construction, equipping and installation of land, improvements and related building fixtures and building equipment" for use as "mixed-use commercial development and an economic development project."

Evidence supported finding that county would derive substantial benefit from bond transaction wherein county development authority would issue taxable revenue bonds to companies to finance four development projects, and therefore trial court did not err in determining that the bond transactions did not result in unconstitutional gratuity; at the hearing on State's petition to validate the bonds, authority's executive director testified that the projects at issue would improve county's infrastructure, create hundreds of jobs, expand tax rolls, and bring economic development.

Superior court did not impermissibly shift burden of proof by requiring county resident, as intervenor, to show cause as to why proposed taxable revenue bonds to finance four development projects should not be validated, and therefore trial court did not err in its assignment of burden of proof, in proceedings on State's bond validation petitions in which resident intervened and filed objections; trial court correctly assigned burdens of proof and found that State satisfied its burden of proof, while resident failed to satisfy his own burden with regard to his affirmative defenses.

In the context of bond validation proceedings, where an intervention has been filed by citizens and taxpayers of the political subdivision involved, it is the intervenors who are quasi-defendants, and the technical adversary position between the governing authority and the solicitor general, acting for the State, will not permit these two entities by admissions in pleadings to establish as proved the essential allegations of the petition for validation, but the burden is on the State, acting through its solicitor general, to prove the material facts which are requisite to obtain bond validation; and where there is a total absence of such proof, it is error for the court to render judgment validating the bonds.

Superior court's ruling in which it validated county development authority's issuance of taxable revenue bonds to finance four development projects included information regarding ad valorem taxation matters only as necessary to resolution of the validity of the bonds, rather than constituting merit-based determination, and therefore superior court did not rule on ad valorem taxation issues without subject-matter jurisdiction; in its orders, superior court simply reiterated that satisfaction of development purposes of the bond transactions justified validation and that a tax exemption was a natural by-product of that validation, as expressly provided by statute expressly exempting development authorities from taxation.

Superior court had jurisdiction to consider issue of methodology formula expressed in county development authority and companies' memoranda of agreement that established method for assessing ad valorem taxes on leasehold estates created by authority and companies' bond transaction to finance four development projects; statutory framework set out in Development Authorities Law vested superior court with exclusive jurisdiction to hear and determine all matters relevant to bond validation.

Superior court's explanation as to why it had subject-matter jurisdiction over State's petition seeking validation of county development authority's issuance of proposed taxable revenue bonds intended to finance four development projects was sufficient to satisfy requirements of statute requiring that, upon request, judgment of court include written findings of fact and conclusions of law; in its validation order, superior court correctly noted that statute governing validation of revenue bonds vested exclusive jurisdiction over bond validation matters in superior courts.

Superior court made adequate findings of fact and conclusions of law to support its conclusion that county development authority and companies' bond transactions for financing four development projects did not violate Gratuities Clause; superior court set forth evidence that projects would create new jobs and promote industry and employment opportunities for public good, and superior court then looked to relevant case law and applied it to facts of case to conclude that authority had demonstrated through substantial evidence that bonds provided substantial benefit to people of Georgia through economic development and job creation.

County board of assessors did not impermissibly cede its authority in the memoranda of agreement between county and companies that set forth the methodology to be used to value leasehold estates created by bond transactions between county and companies to finance four development projects; board's choice to execute agreement represented exercise of discretion in and of itself, rather than loss of discretion, and the agreement's ramp-up valuation formula that increased value over time was not inherently unlawful.